

Section 11



SCHOHARIE COUNTY
PUBLIC HEALTH COMMITTEE

November 29, 2010

Health Department Staff:

At this time we are writing to notify you that Kathleen Strack has resigned as Director of Public Health. At the Board of Supervisors meeting on Friday, November 19, 2010 the Board voted and has assigned the Health Department Personnel to report to Cassandra Ethington, Personnel Officer. Dr. Lorraine Davis is scheduled to be on call for Mrs. Strack for the Public Health side of things and she will continue to do so until you hear differently from either Mrs. Ethington or the Board of Health. The Board of Health meets this Thursday evening and they will decide at that time who will continue to fill in on the Public Health side during this transition. Please remember Cassandra is not going to be acting as the Public Health liaison with the State or the Board of Health, she will be there to direct and give all of the staff a point person to go to during this transition period and will be reporting to the Public Health Committee until further notice. Please remember she previously has been given the authority to do what is needed with the transfer of the CHHA to HCR during the management period straight on through to the actual closure.

Mrs. Ethington has been directed by the Board of Supervisors and has the full support of the Board of Supervisors during this period. There will be moves and adjustments for all during this time and each person may have different feelings about these changes. Please try to be considerate of the feelings of your fellow co-workers as each may not share your same feelings.

Mrs. Ethington is available 24/7 for each of you. She has informed us that you can contact her either at work or at home with any of your concerns. She has always offered this availability to the Board, Department Heads and her staff and it is now extended it to you as well.

Also if after you have gone to Cassandra and she is not able to answer your questions or concerns I am also available. Please feel free to contact me.

Respectfully,

Bill Goblet, Chairman
Public Health Committee

Cc: Betsy Bernocco, President, Board of Health

Section 12

Jan 21/11

Motion #14 by Mr. Richards to declare the copier at the Youth Bureau surplus. Seconded by Mr. VanGlad. Voice vote: carried.

Motion #15 by Mr. Richards to authorize travel for Lillian and Zach to attend a Planning Conference in Saratoga Springs. Seconded by Mr. Murray. Voice vote: carried.

Mr. Richards – FYI, web site to sign up for notifications when flag should be flown at half mast: www.aflag.com or halfstaff.org

Mr. Richards – Occupancy tax did exceed estimates for 2010. The grant program is to begin in 2011. List of contracts for OFA attached to minutes for Board review.

Law Enforcement Committee – Mr. Bradt – no meeting.

Public Health Committee – Mr. Goblet

Motion #16 by Mr. Goblet to approve the renewal of Department of Health and the Certified Home Health Agency contracts for 2011. Seconded by Mr. Mann. List includes: BlueShield of Northeastern NY, CDPHP, Complete PT,OT, SLP, Lorraine Davis, MD, Delta Health, Empire BlueCross BlueShield, Empire Home Infusion, Excellus Blue Cross BlueShield, Fidelis Care, GHI HMO, Steve Lammers, Stella McKenna/Maranatha, Marchand Manor, McBee Associates, Rosemary Mix, MVP Health Care, Planned Parenthood (4), SteriCycle. Roll call: Yes – 2974 Carried.

Motions #17 by Mr. Goblet to approve the Preschool contract the Geanine Eisel, Teacher of the Deaf for Preschool Services. Seconded by Mr. Mann. Roll call: Yes – 2974 Carried.

Motion #18 by Mr. Goblet to approve the amendment to the contract with Otsego Northern Catskill BOCES in Stamford pending approval of the County Attorney. Seconded by Mr. Mann. Roll call: Yes – 2974 Carried.

Motion #19 by Mr. Goblet to authorize the Chairman of the Board to sign the budget modifications to the 2009 Local Health Dept. Homeland Security Grant when it is returned from the Office of Homeland Security effective through the end of the grant year. Seconded by Mr. Mann. Roll call: Yes – 2974 Carried.

Motion #20 by Mr. Goblet to request Mrs. Ethington continue in the capacity of managing the health department with the stipend of \$150.00 per week retroactive to January 3, 2011 to be reviewed monthly by this committee until an Interim Director is appointed. Seconded by Mr. Barbic and Mr. VanGlad. Roll call: Yes 2394 No – 580 Mr. Bradt, Mr. Brandow, Mr. Skowfoe and Mr. VanWormer III. Carried.

Rules & Legislation, Elections Committee – Mr. Brandow

Mr. Brandow – Next meeting is 2/8/11 at 5:30 p.m.

Section 13

Print Form

MSD 426-A(03-10)		Report all personnel changes on this form		DATE:	
REPORT OF PERSONNEL CHANGE AND SUPPLEMENTARY PAYROLL CERTIFICATION		1 Month		6 Day	2010 Year
TO: Department of Personnel and Civil Service PO Box 675, 284 Main Street, Room #310 Schoharie, New York 12157-0675		NAME OF EMPLOYEE Cassandra Ethington			
FROM: <input checked="" type="checkbox"/> County <input type="checkbox"/> Town <input type="checkbox"/> Village <input type="checkbox"/> School District <input type="checkbox"/> Special District		ADDRESS 536 Cavens Road Howes Cave, NY 12092			
AGENCY NAME Schoharie County		PHONE NUMBER (Home) (518) 296-8744 (Other)			
DEPARTMENT Health Dept.		TITLE OF POSITION Interim Public Health Director		SALARY \$3500	
NAME AND TITLE OF LAST EMPLOYEE IN POSITION Kathleen Farrell-Strack		EMERGENCY CONTACT Person Phone Number			
<input type="checkbox"/> Veteran <input type="checkbox"/> Disabled Veteran		<input type="checkbox"/> Non-Veteran <input type="checkbox"/> Exempt Volunteer Fireman		SOCIAL SECURITY NUMBER	
	Check Nature of Personnel Change	Date Effective		Action Necessary by Appointing Officer	
APPOINTMENTS	<input type="checkbox"/> Permanent - Competitive Class			Return Certification	
	<input type="checkbox"/> Non-Competitive Class Appointment			Attach County employment application	
	<input type="checkbox"/> Exempt Class Appointment			Attach County employment application	
	<input type="checkbox"/> Labor Class Appointment			Attach County employment application	
	<input type="checkbox"/> For Term of Office	From	To	Give facts under Remarks	
	<input type="checkbox"/> Provisional			Attach County employment application	
	<input type="checkbox"/> Promotion - Competitive			Return Certification	
	<input type="checkbox"/> Promotion - Provisional			Attach nomination	
	<input checked="" type="checkbox"/> Temporary (6 Month Max.)	From 8/23/00	To 1/3/11	State length of employment & application	
	<input type="checkbox"/> Substitute	From	To	Give facts under Remarks & application	
	<input type="checkbox"/> End of Probation			Attach signed Probation Report	
TERMINATIONS	<input type="checkbox"/> Resignation			Submit signed resignation	
	<input type="checkbox"/> Retirement			Give effective date	
	<input type="checkbox"/> Removal			Attach copy of proceedings	
	<input type="checkbox"/> Deceased			Indicate date	
	<input type="checkbox"/> Layoff (Place of Work or Funds)			Give facts under Remarks	
OTHER CHANGES	<input type="checkbox"/> FMLA (12 Weeks Max.)	From	To	Indicate Dates - Give facts under Remarks	
	<input type="checkbox"/> Military Leave	From	To	Indicate Dates - Give facts under Remarks	
	<input type="checkbox"/> Other Leave or Absence (1 yr. Max.)	From	To	Indicate Dates - Give facts under Remarks	
	<input type="checkbox"/> Return from leave	Date		Indicate Date	
	<input type="checkbox"/> Suspension			Give facts under Remarks	
	<input type="checkbox"/> Reinstatement, Personnel Approval			Give Reason Remarks	
	<input type="checkbox"/> Transfer/Reassignment			Give facts under Remarks	
	<input type="checkbox"/> Change in Classification			Give facts under Remarks	
	<input type="checkbox"/> Change in Salary			Indicate new salary	
	<input type="checkbox"/> Change in Name			Show old name under Remarks	
	<input type="checkbox"/> Change in Address			Give old address under Remarks	
	<input type="checkbox"/> Other			Give facts under Remarks	
REMARKS: (Continue on back if necessary)					
Motion # from BOS mtg. on 11/19/2010 (for salary transfer of CRHA)					
Appointing Officer: <u>Betsy Bernocco</u> /Betsy Bernocco <u>William Goblet</u> William Goblet					
Title: President, Board of Health Chairman, Public Health Committee					
Address:					
This certifies that the above employment is in accordance with Law and Rules made in pursuance to Civil Service Law. Subject to any limitation or condition specified above.					
Certificate Valid Until: <u>1-1-11</u> (If there is a Valid Until date DO NOT pay after that date) Date:					
By: <u>[Signature]</u> Date: <u>1-1-11</u>					

Section 14



ANDREW M. CUOMO
GOVERNOR

STATE OF NEW YORK
DEPARTMENT OF CIVIL SERVICE
ALFRED E. SMITH STATE OFFICE BUILDING
ALBANY, NEW YORK 12238
www.cs.ny.gov

February 21, 2012

Cassandra Ethington
Personnel Officer
Schoharie County Personnel Department
284 Main Street
P.O. Box 675
Schoharie, New York 12157

Dear Ms. Ethington:

This is in response to your request for an opinion of whether the past actions by the Schoharie County Board of Supervisors to appoint you as Personnel Officer and assign you to perform the functions relative to the County's Public Health Director and provide you with a stipend to exercise those duties are a violation of Civil Service Law section 27. Please be advised that though this Department provides technical advice and assistance pursuant to the provisions of Civil Service Law section 23, such advice is not legally binding and you may have to contact the Office of the Attorney General for a more definitive answer to your questions.

In addition to your request for technical assistance in this matter, we have received inquiries from members of the public on the same subject, stating their concern that you served as both the Personnel Officer and Public Health Director for a limited period of time during 2011 - 2012.

As you are aware, Civil Service Law, section 27(1) states:

1. *"A member of a municipal civil service commission or personnel officer, appointed on or after the effective date of this act, shall not hold any other public office or employment under the political subdivisions or subdivision over which such commission or personnel officer exercises jurisdiction, for which he shall receive compensation other than necessary travel and other expenses incurred in the performance of the duties of such office or employment."*

As the Personnel Officer, you were appointed by the County Board to serve for a six-year term. A Personnel Officer is a public officer charged with the enforcement of Civil Service Law within Schoharie County. Service in that role while simultaneously functioning as Public Health Director, another, separately appointed public officer, charged with the enforcement of Public Health Law, appears to run contrary to Civil Service Law, section 27(1). The receipt of additional compensation appears to support the fact that significant duties as Public Health Director were exercised.

There is an Attorney General's Opinion (No. 82-10), in which the Attorney General concluded that a county personnel officer may take on the additional duty of preparing payroll. The Attorney General characterized the payroll function as a separate ministerial act involving minimal exercise of discretion that is not inconsistent or subordinate to the Personnel Director position. When approving this arrangement, the Attorney General specifically noted the close relationship between payroll certification and civil service enforcement (see CSL section 100).

The additional duties of Public Health Director do not appear closely related to the duties of a Personnel Officer. Furthermore, appointment to the position of Public Health Director, whether on a temporary or permanent basis, is subject to statutorily established minimum qualifications and approval by the New York State Commissioner of Health.

It is hard not to characterize the arrangement described as two separate jobs, notwithstanding the reimbursement by stipend of the additional duties performed. In reality, there appear to be two separate salaries for two distinct functions.


The Attorney General's Opinion (No. 82-10) also references the well-established common law doctrine of "incompatibility" when two or more incompatible or subordinate public offices are held by the same person. We discussed this concept briefly as related to the hybrid classification of Deputy Public Health Director/Director of Weights and Measures. In Schoharie County, the Public Health Department is a department with classified service positions subject to the jurisdiction of County civil service. By having responsibility as Public Health Director and Personnel Officer you would have the full range of responsibilities for appointments, terminations, disciplinary actions at the Public Health Department and also be responsible for reviewing, approving/denying and hearing appeals from the same decisions as Personnel Officer. This is an obvious structural conflict.

This does not mean that a Personnel Officer could not be appointed to administer County-wide merit system functions and also perform some additional duties as well. In some counties, the Personnel Officer also has responsibility for purchasing duties for the county. The key component, however, is that the Personnel Officer must have only one County job that does not include duties that conflict with merit system duties required by law and the individual appointed must meet any required minimum qualifications.

Based upon the information provided, the Schoharie County arrangement does not appear to comply with the clear language and intent of Civil Service Law, section 27. We therefore recommend that the County Attorney seek an opinion from the Attorney General regarding whether the Public Health Director is merely an additional duty of the Personnel Officer or if constitutes a separate employment.

Should you have any further questions, please contact this office at (518) 473-5139.

Sincerely,


Nancy B. Kiyonaga
Director, Commission Operations
& Municipal Assistance

Section 15

**Schoharie County Board of Supervisors
Public Health Committee Meeting
March 8, 2011**

In attendance:

William Goblet, Chairman
J. Carl Barbie
Marie Campbell
Richard Lape

Excused:

Mike Brandow

Human Resources:

Cassandra Ethington, Director

Health Department:

Mike Cole, Director of Environmental
Eva Gigandet, Public Health Preparedness Coordinator

Supervisor Goblet called the meeting to order at 6:00 p.m.

Privilege of the Floor:

Mike Cole, Director of Environmental, "What Services Does Environmental Provide?"

Mr. Cole gave an overview on the services provided by the Environmental Department.

Graphs distributed to the committee were the 2010 Residential Sewage Disposal Program; Sewage Disposal Program, Last 5-Year Comparison 2006-2010; Sewage Disposal Program 2010 Geographic Distribution; and graphs depicting the Sewage Program 2010 # Permits Issued since 1980.

The 2010 Residential Sewage Disposal Program shows the number of applications received, the type of residence and the type of sewage disposal system. There are two types of sewage disposal systems; a conventional system using a leech field and alternative using a raised system. Certificate of Compliance is issued after inspection and the determination is made by the health department that the system has been installed correctly. The graphs on the Sewage Program 2010 # Permits Issued since 1980 depict a picture of the economy during those years regarding new construction in the county.

Mr. Lape asked if private engineer plans have to come through the Environmental Department.

All private engineer plans for sewer/septic have to come through the Environmental Department. Sewer/septic designs are according to the NY State design handbook. If private engineer plans do not meet NYS design requirements, the plans are returned to the engineer with an explanation and must be updated to meet regulations before Certificate of Compliance can be issued.

The cost for a homeowner's permit is \$450.00. Schoharie County residents can hire a private engineer to draft their plans but it would probably cost the residents more money. The engineer's plans would still come through the environmental office to be review and checked.

Another handout shows statistical information the other services for 2010 that the Environmental Department conducted.

The ATUPA (Adolescent Tobacco Use Prevention Act) is an act that amends public health law and the tax law in relation to the sale of tobacco products to minors. The Environmental Department makes "compliance checks" at each facility licensed to sell tobacco products. There are approximately 31-32 stores in the county that sell tobacco products. Compliance checks are often done in February, in the spring during spring break and occasionally in the summer.

The department issues Food Permits and inspections of these facilities are conducted throughout the year. There are about 45 restaurants in Schoharie County.

Inspection/services include: temporary residences which include hotels/motels. Agriculture Fairgrounds Inspections; Children's camps; Public Water supplies; Temporary Food Permits are issued to vendors that sell food less than a 14-day period; Mobile Food Permits which are vendors who locate in multiple locations throughout the county; Camp Ground inspections-there are eight permitted; enforcement of the Sanitary Code of the county; inspection of the Migrant Labor Camp-one Barbour Farms and Mobile Home Parks inspections of which there are eleven in the county.

One visit to a facility will often overlap a number of inspections; an example would be a motel with a pool and food service-this one visit could equal three inspections: motel, pool and food inspections.

Permits/applications generate approximately \$52,000.00 per year in revenue.

The department receives \$130,000.00 in grants dollars which include Public Water Supply; Rabies and ATUPA.

OLD BUSINESS

Employee Self Evaluations

The date of submission for Employee Self-Evaluations has been extended to mid-March due to move.

Nutritional Information for Restaurant Menus

The Nutritional Information for Restaurant Menus is a new initiative and will be undertaken by the Board of Health. The BOH will work with "mom and pop" restaurants as a test before presenting to the Board of Supervisors as new legislation will be required.

Zostavax - Shingles Vaccine

Fifty doses of Zostavax, (shingles vaccine) were ordered funded under the ARRA (American Recovery and Reinvestment Act) grant. Notifications will go out to primary care providers to alert county residents who are eligible to receive this vaccine.

NEW BUSINESS

Car Seat Grant

Bonnie Hamilton, PHD Consultant from Delaware County recommended that SCDOH look into applying for a Car Seat Grant to help further the county's prevention agenda in injury prevention. Ms. Ethington will approach Environmental Staff to be certified as installers.

Ms. Ethington requests approval to move forward in applying for the Car Seat Grant.

Mrs. Campbell made the motion to move forward with the Car Seat Grant; seconded by Mr. Lupe and carried.

What's Been Happening

Move Updates:

3/14 Finish installing carpet on the first floor
3/21 New front door is scheduled to be installed
3/15-16 2nd floor health department staff should be moved to first floor
3/24 Planning PCs scheduled to be moved
3/24-25 Planning area carpeted and paints; planning to move
3/28-4/1 Moves should be completed

Cleaning:

The cage in the basement that houses the medical supplies will be sorted out. Medical supplies not needed or used by HCR or PH will be donated.

A complete list of surplus items will be compiled and sent out at the same time to all including the town offices by the end of the month.

Records Management:

Records Management is ongoing project and hopefully will be completed by the end of April. All records will be boxed and labeled correctly with CO2 codes. Expired/outdated material will be discarded/recycled.

Financial Update

2010 State Aid Application

Corrections have been made and we are just awaiting the final approval.

2011 State Aid Application

An extension was requested and granted to the end of March to complete the 2011 State Aid Application. The move and renovations will be added to the 2011 State Aid Application to see how much can be recovered on state aid.

Budget Format

Will be relooking at how the expenses are presently broken out in the budget to see if capturing and providing a more detailed breakdown for the State Aid will elicit more funding. Presently, a lot if this is done manually because of the way the system is and the limited categories on the Budget.

Daily time log sheets

The staff's daily time log sheets have been completed and with the information provided we will be looking for ways to get more interaction between department units and to ensure we are getting as much State Aid reimbursement as possible.

CHHA

Long Term Care

Ms. Ethington is working on a checklist so we can track where we are at in the Long Term Care CON process. Hopefully all will be in place by June 2011.

NYS Health Department

No information forthcoming from the state on the LHSCA Application. CHHA closure plan only needed two changes at this time.

LHSCA Policies & Procedures

Ms. Ethington has approached Genessee and Orleans Counties for their P&P's, still waiting to hear back from them. She will work on the P&P with Anne, the PH nurses and educator.

CHHA Revenue/HCR Billing

Revenues are still being billed for December. Want to add someone else to help with the billing so the revenues can get caught up with the expenses.

HCR billing is about \$50,000-60,000 billed out. Expenses are not exceeding revenues.

Public Health

ARRA Grant Audit

The state conducted an audit this past week on the materials purchased (copier/shredder) under the ARRA grant. The audit went well.

There is approximately \$2,500.00 remaining and we will be looking for signage for the two entrance doors to the department of health building.

Supervisor Marie Campbell left the meeting at 6:50 p.m.

Public Health Preparedness

The Public Health Preparedness Coordinator is requesting assistance with deliverables through contracting with Vanessa Murphy as a consultant. This contract will be grant funded. Ms. Ethington requests a motion to bring the contract to the finance committee pending approval of the county attorney.

Mr. Lape made the motion to bring the contract with Vanessa Murphy as Public Health Preparedness Consultant to the finance committee and pending county attorney approval; seconded by Mr. Barbic and carried.

Posting for Director

An employment ad for the Public Health Director position has been completed and placed with the Times Journal and the My Shopper for the next 4 weeks. Resumes are due on the March 28th.

Policy & Procedure Updates

Bonnie Hamilton will be back for one more visit to review the P&P's. The rabies policies and procedures are outdated will be addressed.

Personnel

Mike Cole has announced he will be retiring at the end of March after 30 plus years of service.

Executive Session

At 6:55 p.m., request to go into executive session to discuss Bonnie Hamilton's Report was made by Mr. Lape; seconded by Mr. Barbic and carried.

At 7:25 p.m., request to come out of executive session was made by Mr. Lape; seconded by Mr. Barbic and carried.

Motion was made by Mr. Barbic to take the request to create a Supervising Public Health Nurse position instead of back-filling the Director of Environmental to the Personnel/Finance Committee; seconded by Mr. Lape and motion carried.

Adjournment

Meeting to adjourn by Mr. Goblet; seconded by Mr. Lape at 7:30 and carried.

Respectfully submitted,

Anne MacCuish

**SCHOHARIE COUNTY BOARD OF SUPERVISORS
PUBLIC HEALTH COMMITTEE MEETING
March 8, 2011**

Present: William Goblet, Chairman, Marie Campbell, Richard Lape, Carl Barbic
Absent/Excused: Mike Brandow
Staff: Joseph M. Patterson, DCS; Linda Meineker, Deputy DCS;
Patti Gustafson, FC

Call to Order: Richard Lape, Acting Chairman, called the meeting to order 5:00 PM.

PERSONNEL

Grade 19 Staff Social Worker vacancy: Joe reported the staff social worker at the Chemical Dependency Clinic has resigned. He requested approval to backfill the grade 19 – Staff Social Worker. Another vacant G15 has been purposefully left vacant by Joe based on demand and desire for cost containment. Upon motion of Marie Campbell, seconded by Bill Goblet, the committee moved to send the backfill request to the Finance & Personnel Committees.

FINANCE - none

OLD BUSINESS - none

NEW BUSINESS

CSB and BOS Meeting {March 31st @ 5:45 pm}: Joe reported that he had sent each Board of Supervisor PH Committee member a memo inviting them to a joint meeting with the Community Services Board to discuss mental hygiene services and future operations for his Department. The meeting is scheduled for March 31st at 5:45 pm located at the Annex building.

ADJOURNMENT: meeting adjourned at 5:20 pm

Respectfully Submitted,
Patti Gustafson

Section 16

MEMORANDUM

June 14, 2011

TO: Eva Gigandet

FROM: Cassandra R. Ethington, Interim Public Health Director

This memorandum will confirm our conversations held in April and again in May 2011, in Asante's office, during which you were notified that you needed to improve on your communication skills and following the chain of command. At that time I informed you of the protocol that you are to follow going forward. Asante Shipp-Hilts is your immediate supervisor and I am in charge administratively over the health department on a day to day basis until further notice.

All daily work is to be run through and approved by Asante. If there is something that involves any other departments, members of the Board of Supervisors and/or the County Attorney you must run those items by Asante and I before moving forward on any other them. If there are meetings to take place that are to involve any of the parties previously outlined those meetings also need to be planned out with Asante and me ahead of time.

You are presently the Public Health Preparedness Coordinator for the Public Health Department. This position requires a high level of quality communication between multiply departments/agencies and persons within those departments/agencies at all different levels. Most importantly the communication needs to be there between you and your supervisor and Director. Improvement needs to happen on the above items or future disciplinary action will be the result.

Cassandra R. Ethington
Interim Director
Public Health Department



Please sign below stating that you have received this memorandum.

Cc: Personnel File
CSEA Local Representation

Section 17

**SCHOHARIE COUNTY BOARD OF SUPERVISORS
PUBLIC HEALTH COMMITTEE MEETING**

**For: Public Health Department
November 8, 2011**

Present: William Goblet, Chairman, Carl Barbic, Richard Lape
Absent/Excused: Mike Brandow, Marie Campbell
Staff: Cassandra Ethington, Personnel Director; Asante Shipp-Hitts, Epidemiologist;
Patti Gustafson, Fiscal Coordinator
Call to Order: William Goblet, Chairman, called the meeting to order 5:45 pm.
Location: MOSA Office Building, Howes Cave, NY
Guest(s): Eva G., Bio-Terrorism Coordinator; Penny Grimes, DOH Public Health Educator

PERSONNEL

DOH Layoff(s): Cassandra reported that four (4) staff are targeted for layoffs within the DOH. The duties associated with these four positions will be absorbed by existing staff. The NYS grant funds and state aid would be re-distributed to remaining staff as well.

Deputy Director DOH: Cassandra reported she and Asante may be looking at a DOH Deputy Director; instead of a Director of Environmental Services, to meet NYS DOH requirements in obtaining a LHCSA License.

Guest: Eva G expressed her concerns regarding the layoff notice she received and the future of implementing the Public Health Preparedness program. Discussion was heard regarding Department Head responsibilities, chain of command, employees roll/duties, grant funding, parameters of the Public Health Preparedness state funds, management's role to utilize resources, employee concerns or issue's to be directed and handled by the Department Head {Cassandra E. or Asante Shipp-Hills} not brought to a BOS – PH Committee meeting, the need for continuity of services, NYS DOH recognition of Cassandra E as Acting Director and Asante SH as pending Director. Upon **motion** of Carl Barbic, seconded by Richard Lape, the Committee unanimously moved to discontinue conversation regarding layoffs and Departments Heads role, and whereas, the Board of Supervisors must maintain the integrity of the structure in place {chain of command} and whereas, they recognize and fully support Cassandra E and Asante SH as the Department Heads and Oversight Director respectively, and whereas, the Board of Supervisors do not have the time allotted to micro-manage the Departments; leaving day to day operations at the discretion of the Department Heads.

Guest: Penny Grimes expressed her concerns regarding the layoff notice she received. Penny distributed a letter to committee members and asked for their support to keep her position filled.

Decision: PH Committee members expressed their sincere empathy for the layoff(s) but recognized the need to reduce spending, taxes, and the important role of county government to be responsible stewards of county finances. The layoffs are recognized as a strategic vision linked to a budget plan to reduce costs. Members commented that there are many challenges that lay ahead for Schoharie County – a continuously deteriorating infrastructure, New York State mandates, and loss of tax base {due to the flood}. They expressed their appreciation for the many years and fine work of each employee.

FINANCE

Budget Transfers: upon **motion** of Richard Lape, seconded by Carl Barbic, the PH Committee unanimously approved the budget transfers as requested; and to submit the request to the Finance &

Personnel Committee for approval. Budget transfer to cover costs associated with Medical Supplies and Physical Therapy contractual services; for a total of \$7360. {see attached Finance memo}

OLD BUSINESS

Budget Summary: a Budget Summary will be compiled and presented to the PH Committee members asap.

NEW BUSINESS

Executive Session: upon motion of Richard Lape, seconded by Carl Barbic, the PH Committee adjourned to enter into executive session at 6:15 pm to discuss personnel issues. PH Committee meeting reconvened at ____pm. No action taken.

Adjournment: the portion of the meeting relating to the Public Health Department adjourned at ____pm.

Respectfully submitted,
Patti Gustafson

Section 18

STATE OF NEW YORK
SUPREME COURT COUNTY OF SCHOHARIE

In the Matter of the Application of
PENNY GRIMES,

PARTY
AFFIDAVIT

Petitioner,

-against-

INDEX NO. _____

THE COUNTY OF SCHOHARIE,
a Municipal Corporation, and CASSANDRA
ETHINGTON, Personnel Officer,

RJI NO. _____

Respondents.

for Judgment pursuant to CPLR Article 78

STATE OF NEW YORK)

COUNTY OF Albany) ss.:

PENNY GRIMES, being duly sworn, deposes and says:

1. I am the plaintiff in the above-captioned Article 78 proceeding. I make this affidavit in support of my petition in this proceeding, which seeks to have me reinstated to the position of Public Health Educator II. I also seek to recover lost salary, benefits and seniority since I was terminated from that position on December 16, 2011.
2. I was hired by the County of Schoharie in August 2004 to serve as a Public Health Educator. To the best of my knowledge, and based upon my examination of records maintained by the County of Schoharie, the position of Public Health Educator was created in 1994 in connection with an application for a grant from the State of New York in conjunction with the Healthy Heart Program. I believe that it was at that time that the position of Public Health Educator was first implemented in the County of Schoharie.

3. I served in the position of Public Health Educator from 2004 until that position was eliminated in the Schoharie County 2012 budget. I was originally notified on November 2, 2011 that I would be laid off effective December 2, 2011. However my layoff date was later extended until December 16, 2011 and my last day of work as a Public Health Educator was December 16, 2011. Attached hereto as exhibit A is the letter of November 2, 2011 advising me of my layoff and attached hereto as exhibit B is a letter of December 2, 2011 confirming that my layoff date was extended until December 16, 2011.
4. From the time I first became employed by the County of Schoharie until the end of 2010, I served under four different Public Health Directors (acting or official). During that time period, I performed my duties in a diligent fashion and my contributions to the Department of Health were noted both by the County Department of Health and the New York State Department of Health. I was not subject to any disciplinary actions in that time.
5. For about 3 1/2 years prior to December 2010, Ms. Katie Strack served as the Schoharie County Public Health Director. My relationship with Ms. Strack was a very positive one.
6. After Ms. Strack left, the County did not immediately hire a Public Health Director. At the time I was qualified to be considered for the position of Public Health Director because I have a Bachelor's Degree in Community and Human Services and a Master's Degree in Health Education. I am also a Registered Professional Nurse in the State of New York and I have been licensed since 1969.
7. When Ms. Strack left, Cassandra Ethington, Personnel Officer for the County of Schoharie, assumed the duties of the Public Health Director and she was given a weekly stipend for this. I understand that Ms. Ethington has an Associate's degree in culinary arts. She has no background in public health or nursing. She

was not qualified to assume the position of acting or interim Public Health Director, although that is how she held herself out and acted.

8. From the time she assumed the direction of the Public Health Department my relationship with Ms. Ethington was extremely poor. Ms. Ethington went out of her way to verbally abuse me, criticize me and attempted to strip me of the responsibilities that I exercised for many years.
9. In early December of 2011, shortly after she assumed direction of the Public Health Department, Ms. Ethington asked me to meet with her in her office. Before attending this meeting I asked if I should have union representation. She did not respond at that time to my inquiry about union representation. At this meeting she acted in a very unprofessional fashion. She did inform me that no one currently employed in the Department of Health was qualified to be Public Health Director. She also told me that the Board of Supervisors wanted someone from the outside and that there would be a lengthy search for someone. She made it clear to me that I should not consider applying for the position of Public Health Director. Subsequently, I later learned that had she informed the Board of Supervisors and the Board of Health that there was no qualified employee to assume the role of interim Public Health Director or to be considered for Public Health Director.
10. On December 28, 2010, I was called in by Cassandra Ethington for a meeting in a conference room at the Department of Health building. Cassandra Ethington was present in the conference room, along with Betsy Bernocco, President of the Board of Health. At this meeting, Ms. Ethington again acted in an extremely unprofessional manner. She proceeded to literally scream at me for approximately 2 1/2 hours which could be heard by other employees of the Department of Health. Ms. Ethington repeatedly called me a liar because she claimed that I was really angry for not being appointed to the position of Public

Health Director. She expressed extreme displeasure at the fact that I had inquired whether I should have union representation when I attended the first meeting with her. During this meeting on December 28, Ms. Ethington told me that if I did not like the way things were done in Schoharie County, I should move on. I would like to point out that I had not done anything that would justify this type of verbal attack by Ms. Ethington.

11. That meeting was very upsetting to me. On December 29, I had a regularly scheduled doctor's appointment and I was still so distraught that my doctor prescribed an anti-depressant.
12. It was also clear after these meetings that Ms. Ethington had an intense personal dislike for me. It was clear that she would block any attempt on my part to seek other positions in the Schoharie County Health Department and that it was her desire to force me to resign my position with the Department of Health.
13. After the December 28 meeting with Ms. Ethington, I attended a meeting of the Professional Advisory Committee in mid-January, which I was the chair person for two years or more. The Professional Advisory Committee is comprised of the Schoharie County Health Department Medical Director and representatives from various community service agencies. At that meeting I had a discussion with Esther Downey, a retired RN and longstanding Board of Health member. Ms. Downey attended the Professional Advisory Committee meeting as a representative of the Board of Health. After the meeting ended, Ms. Downey asked me if I were qualified to be Public Health Director and if I were interested in the position. Ms. Downey pursued this line of questioning with me in private. I told her that I did consider myself to be qualified but I thought it would be fruitless to apply for the position because Ms. Ethington would block my application. I subsequently learned that my name had been brought up to the Board of Health by the Medical Director as a possible candidate for acting Public

Health Director. The response was that as Public Health Educator I would be much too busy with those duties.

14. In mid January, following the meeting of the Professional Advisory Committee, I was again confronted by Ms. Ethington in the presence of Betsy Bernocco. The meeting took place in the Health Department conference room where Ms. Ethington again proceeded to scream at me and expressed her extreme displeasure at the comments I had made to Ms. Downery after the Professional Advisory Committee had met. This meeting also became another lengthy screaming session overheard by my former colleagues and lasted approximately for 1 to 2 hours.
15. Later during 2011, Ms. Ethington took steps to reduce my responsibilities within the department. She arranged to hire an independent contractor, Ms. Bonnie Pecka, at the rate of \$85 per hour, who was assigned some of the responsibilities that I had previously had with respect to the Quality Improvement Program. I had headed the Quality Improvement Committee which was responsible for self-audits of the Department of Health as well as audits of an outside contractor. Ms. Pecka was hired to take over the Quality Improvement Program for the Health Department, which was a task I had previously performed. During September of 2011 Ms. Ethington also brought in a county employee from outside the Health Department. Among other duties, this employee took over the fiscal management of all the NYSDOH grant funded programs, which had previously been my responsibility.
16. In May 2011 the County hired Asante Shipp-Hilts as Epidemiology Coordinator. Ms. Shipp-Hilts was eventually named Public Health Director, but at the time she was initially hired by the County she did not have the qualifications to be Public Health Director. At the time she was hired she was in her 20's. She did not

become fully qualified for, and appointed as, Public Health Director until early this year.

17. When Ms. Shipp-Hilts was hired by the County she became my direct supervisor and I began to report to her, rather than to Ms. Ethington who had been my supervisor from December 2010 through May 2011. However, Ms. Ethington made it very clear to all staff that she was still in charge of managing the Health Department.
18. In October 2011 Ms. Shipp-Hilts indicated to me that she thought I might be laid off. Ms. Shipp-Hilts, as my supervisor, did not recommend that my position be eliminated or that I be laid off. In fact, she proposed to Board of Health that I be given a new title and different responsibilities that would have prevented me from being laid off. I appeared before the Board of Health in late October of 2011 to demonstrate my commitment to be the Nurse Manager, a position for which I was well qualified. Subsequently, the Board did agree to move me into the position of Nurse Manager which would have prevented my layoff. However Ms. Ethington blocked my attempt to obtain that position.
19. One week after receiving notification of my layoff, I went before the Public Health Committee to plead for my position. During this meeting, the Committee met with a young man who was being considered for the position of Deputy Director of Public Health, which he subsequently became in February of 2012.
20. When Ms. Strack was Public Health Director, she had a Deputy Director of Public Health. However in 2009, when the County proposed the sale of its Certified Home Health Agency (CHHA), which provided in-home nursing care, Ms. Strack was informed that there was no need for her to have a Deputy Director of Public Health. There was a significant decrease in the staffing at Department of Health and Ms. Strack was advised that because of the outsourcing of the home

health services and decrease in staff, a Deputy Director of Public Health was unnecessary so she could not fill the vacancy created by the loss of her Deputy.

21. The position of Deputy Director of Public Health is a position that I would have been well qualified for based upon my education and my experience with the Schoharie County Department of Health. Nonetheless I was not considered for this position and the position, filled in February of 2012, was given to a person in their mid 20's who had very limited experience in the field of public health.
22. I would also like to point out that prior to the completion of the proposed sale of its CHHA, the County was required to file an application with the state of New York for home care licensure and that it was required to list on that application a qualified health care professional under whom the Health Department would have the legal right to continue to operate. I volunteered to allow the County to use my license as a Registered Professional Nurse on that application. That would have been consistent with my serving in the position of Nurse Manager. It is my understanding that rather than appointing me as Nurse Manager and using my license on the application for home care licensure, the County used the name of another professional, without her consent, on that application. This simply indicates the lengths the County and County Personnel Department were willing to go to ensure that my employment was terminated.
23. I would note that Ms. Ethington and the County have a practice of eliminating older employees and replacing them with younger employees within the Department of Health. I am 64 years old. Ms. Ethington is considerably younger than I am. As I stated, I had been employed by the County of Schoharie since 2004. I have Bachelors and Masters degrees and I am a Registered Professional Nurse. However, I was never considered for the position of Public Health Director or Deputy Director of Public Health, even though this would have allowed me to continue working for the County. Both of these positions were

given to people who were much younger than me and who had significantly less experience in the field of public health. With respect to Public Health Director, it was my opinion, based upon the statements made to me by Ms. Ethington that I would not even be considered for the position. I was also not even considered for the position of Deputy Director of Public Health. I believe this result represents an illegal policy of age discrimination practiced by Cassandra Ethington and the County of Schoharie.

24. It is very significant to note that when I was employed by the Schoharie County Department of Health that all of my salary was reimbursed by the State of New York under Article 6 of the Public Health Law. The County only paid my fringe benefits.

25. I believe that the alleged rationale, as I understand it, for eliminating my position of Public Health Educator was economic necessity. However that explanation is not credible for a number of reasons. First, as noted my salary was paid for by grant funded programs and New York state aid reimbursement so the County will achieve no savings with respect to my salary by eliminating my position.

26. The County did pay my fringe benefits. Although the County will save the cost of those fringe benefits, they are now paying an independent consultant at the rate of \$85 an hour to perform functions I previously performed. I have attached as exhibit C pages from the County's adopted 2012 budget. Line item a. 4010. 4235 is for public health contractual expense. There is no expenditure under this item in 2009 or 2010. There was an expenditure of \$16,380 in 2011 and there is a budget item of \$18,500 for the 2012 budget. This contractual expense is for the outside consultant the County hired in 2011 to take over some of my duties. I believe this contractual expense represents a substantial portion of the cost of my fringe benefits.

April 2010

27. When I was employed by the County both my husband and I were covered under the County's health insurance. In an attempt to convince the Board of Supervisors not to eliminate my position, I offered at a public hearing in December 2011, to reduce my fringe benefit expenses by dropping my husband from my policy. This would have resulted in a savings of \$8,000 to the County for my health insurance. Clearly this would further impact any alleged savings the County would realize for eliminating my position. If the County did not have to pay for my husband's health insurance, it was even more unlikely that they could save any money by eliminating my position.
28. Item a.4010.1014 in the budget is the item for Deputy Director. It can be seen that there was no Deputy Director in 2010 or 2011. This is consistent with that position having been eliminated when the County proposed the sale of the CHHA in 2009.
29. There was no significant increase in the staffing or workloads of the County Health department in 2010 and 2011, so as to justify the hiring of a Deputy Director of Public Health. In fact, the staffing has been reduced considerably during 2010 and 2011.
30. The County's apparent position that the elimination of my Public Health Educator position was to save money is contradicted by the fact that they budgeted \$55,000 for a Deputy Director and ultimately hired him at a salary of \$60,000, which was not deemed to be a necessary position in 2010 and 2011. The amount that the County is spending in 2012 for contractual services and for the salary of a deputy director are well in excess of any amounts they paid me for the services that I performed, because my salary was reimbursed by the State of New York and the County paid only my fringe benefits. The lack of cost savings by eliminating my position is further undermined by the fact that I had agreed, in an attempt to save

my job, to eliminate my husband's coverage under my policy which would have resulted in additional savings of \$8,000 to the County.

31. I am attaching to my affidavit as exhibit D minutes of a meeting of the Schoharie County Board of Supervisors on December 9, 2011. I draw the court's attention to the second page of the minutes. That refers to comments by Kathy Garrison, CSEA representative, who did an analysis of the County budget and found that the County had \$450,000 in contingency funds and was on track for a surplus of \$150,000. The court can also see that the minutes incorporate comments by me where I indicated that County employees were willing to try and help the County save money. It was at this point that I offered to take my husband off my health insurance to save money for the County. I also draw the court's attention to the next-to-last page of the minutes which reflect that I advised the Board of Supervisors that Department of Health employees have been subjected to fear and intimidation; that Ms. Shipp-Hilts did not want to make cuts and wanted more time to review proposed cuts. As best I can tell the Board of Supervisors completely ignored my comments and the budget analysis provided by the representative from CSEA. I would point out that during this meeting, the longstanding County Treasurer, Mr. William Cherry, also verbalized that there was no need to lay off any employees.

32. I am also attaching as exhibit E a portion of minutes from the Schoharie County Board of Supervisors meeting on December 16, 2011. On the eighth page of that exhibit there is the beginning of the discussion by the Public Health Committee. As the court can see there was confusion about who is in charge of the Department of Health. At that point the County was still waiting word from the State to approve Ms. Shipp-Hilts as Director. Some members of the Board of Supervisors thought Ms. Ethington was in charge but the County attorney indicated she was only in charge of the sale of the CHHA. With respect to

personnel cuts in the Department of Health, I believe that those cuts have to be recommended by the Public Health Director. Certainly as of December 2011 there is a question if in fact there was any Public Health Director. It is Ms. Ethington who recommended that my position be cut, but there was certainly, at a minimum, confusion whether she was acting Public Health Director when she made that recommendation.

33. I would point out that from December 2011 until Ms. Shipp-Hilts was officially appointed Public Health Director, Ms. Ethington certainly held herself out to the employees of the Department of Health as being acting or interim Public Health Director.

34. Starting on the day she became acting or interim Public Health Director, Cassandra Ethington treated me with disrespect. She verbally abused me. She made it clear I could not be promoted to any other position in the Schoharie County Department of Health. She made it clear that she wanted me to leave.

35. I believe that one of the reasons for this is that I had been closely associated with the previous public health director, Ms. Strack. There had been conflict between Ms. Ethington and Ms. Strack. A number of employees who served under Ms. Strack have either been eliminated or forced out by Ms. Ethington since she began to serve as acting or interim Public Health Director. It has been her practice to attempt to eliminate any employees who had been supportive of Ms. Strack.

36. As I discussed before, I believe the other reason to eliminate me was Ms. Ethington's attempt to systematically eliminate older employees in the Department of Health and replace them with younger, but less experienced, employees. This was done both with respect to the position of Public Health Director and Deputy Director of Public Health.

37. Because I am protected by a collective bargaining agreement, it is clear that the County could not have discharged me unless it brought charges against me to have me discharged for cause. Because there was no basis to bring such charges, and because Ms. Ethington wanted to get rid of me because of my age and my previous association with the former Public Health Director, she recommended that my position be eliminated as a means of circumventing my protections under either the collective bargaining agreement or the Civil Service Law.

38. The County Board of Supervisors agreed to the elimination of my position, as suggested by Ms. Ethington, allegedly as a means cost savings, but as I have discussed, there is no cost savings to the County based on elimination of my position.

39. The County is required by state law to provide public health services in certain core areas. The core areas are assessing the health of the community, environmental health, disease control and prevention, family health services and health education. This also includes the childhood lead poisoning prevention program and the immunization program both of which I managed. During the time that I was employed by the County I provided at least 90% of all the public health education that the County was mandated to provide and I was very involved with all of the described core areas. During the four years prior to my termination I coordinated several different grant funded programs totaling over \$100,000 and all of them were administered to provide the maximum benefit to the residents of the County.

40. The County must continue to provide these services because they are mandated by state law and they must find someone else to provide the services that I had been providing. The County can eliminate my position but they cannot avoid their obligations to provide public health services as mandated by state law. Although the county has eliminated my particular position, they must of

necessity, pay someone else to provide the services I was providing or be in violation of New York State Public Health Law.


41. Because the County must provide the services and because they did not achieve any significant cost savings by eliminating my position, I believe that the elimination of my position was done in bad faith in an attempt to eliminate me because of Ms. Ethington's antipathy towards me and her bias towards older workers. Since the County knew that they could not terminate me for cause, they used the ruse of ~~financial necessity~~ to eliminate my position.

42. Therefore I respectfully request that my petition be granted and that I be restored to my position as Public Health Educator II and that I receive lost salary, benefits and seniority from December 16, 2011


PENNY GRIMES

Sworn to before me this

9th day of April, 2012.


Notary Public

PAULETTE ALLEN OLMSTED
Notary Public, State of New York
No. 4679834
Qualified in Albany County
Commission Expires April 30, 2014

Section 19

STATE OF NEW YORK
SUPREME COURT COUNTY OF SCHOHARIE

In the Matter of the Application of

PENNY GRIMES,

Petitioner,

-against-

THE COUNTY OF SCHOHARIE, a Municipal
Corporation, and CASSANDRA ETHINGTON,
Personnel Officer,

Respondents,

For Judgment pursuant to CPLR Article 78.

STATE OF NEW YORK)
) ss.:
COUNTY OF SCHOHARIE)

CASSANDRA ETHINGTON, being duly sworn does depose and say as follows:

Introduction:

1. I am the duly appointed Personnel Officer for Respondent Schoharie County and have held this position since on or about January 25, 2006.
2. The term of my most recent statutory appointment will expire on January 24, 2018.
3. As Personnel Officer, I am responsible to advise the County Board of Supervisors and department heads with respect to compliance with the New York State Civil Service Law, as well as related laws and regulations.

4. Pursuant to the Civil Service Law, I am responsible for all matters involving the appointment of civil service employees in a variety of classifications. I also play a significant role in collective bargaining with the union which represents petitioner and most other County employees, and the administration of the resultant collective bargaining agreement.

5. I am fully familiar with the facts attendant to the within petition and make this affidavit in opposition to the same.

The History of the County Department of Health:

6. For approximately 32 years, Carl Stefanik served as Director of the County's Department of Health. ("Department")

7. It was well known that Mr. Stefanik's keen interest was in environmental services, which was a division within the Department.

8. Because of this special interest, Mr. Stefanik may not have given the other divisions within the Department, consisting of early childhood intervention and pre-school services, public health nursing services, emergency preparedness, certified home health agency nursing services and public health education and intervention as much attention as might been warranted.

9. Mr. Stefanik retired as director of the Department on or about June 1, 2006.

10. Joseph Patterson, the County's Director of Mental Health Services, was appointed to act as interim director while the County searched for a new director.

11. On or about January 22, 2007, the County Board of Supervisors, with the approval of the County Board of Health, appointed Kathleen Strack as the new director of the Department.

12. Pursuant to Public Health Law, Article 3, the director reports to both the County Board of Health, which is comprised of one member of the Board of Supervisors and at least three physicians licensed by New York State and the County Board of Supervisors.

13. However, it is the Board of Supervisors which "holds the purse strings" over the Department, by virtue of the County Board of Supervisors' control over the budget of the Department.

14. In or about 2008-2009, the Board of Supervisors began consideration of the closing of the Certified Home Health Agency ("CHHA"), which as noted above was a division within the Department.

15. The CHHA's primary responsibility was to provide in home based nursing and home health aide services to residents of the County.

16. The primary reason for consideration of the closing of the CHHA was that over a number of years the federal reimbursement for CHHA services had become more and more restrictive , to the point that in or about 2008, the CHHA suffered a loss in the approximate amount of \$850,000.

17. The potential closure of the CHHA was a controversial matter within the County.

18. In or about the 2008-2009 time frame, the Department employed 13 full time Registered Nurses, 1 Public Health Nurse, 1 LPN and 3 Home Health Aides, all of whose duties related to the operation of the CHHA.

19. It was, by far, the biggest division within the Department.

20. After much discussion and debate, in or about November 2010, the County turned over management and operation of the CHHA to Homecare Rochester, a private firm, in anticipation of the sale of the County's license to operate the CHHA to that same private firm.

21. As a result, 12 County nursing positions were abolished, although those employees were offered, and many took, comparable employment with Homecare Rochester. The 3 Home Health Aides were laid off and the LPN retired, all in anticipation of the transfer of the CHHA.

22. Notwithstanding the transfer and ultimate sale of the CHHA, the County determined to retain, within the Department, one R.N. position and one Public Health Nurse position with the expectation that these two positions would focus on public health issues such as mother/child health, lead issues, communicable diseases and immunization.

23. Mary Ann Purak, who had worked at the CHHA, was able to hold on to an R.N. position within the Department. At the time, Ms. Purak had been employed by the County for approximately 17 years.

24. Valarie Manchester, who worked at the CHHA, was also able to hold on to a Public Health Nurse position within the Department. At the time, Ms. Manchester had been employed by the County for approximately 23+ years.

25. At the time of petitioner's layoff, she had been employed by the County for only approximately 7 years.

26. In the course of closing the CHHA, certain differences arose between the County Board of Health, the County Board of Supervisors and Ms. Strack, the director of the Department, primarily due to Ms. Strack's management style.

27. As a result of those differences, the County negotiated Ms. Strack's resignation, which resignation was effective on or about November 23, 2010.

28. Petitioner asserts that upon the former director's resignation, I was appointed interim or acting director of the Department, which is simply not correct.

29. As the minutes of the December 16, 2011 meeting of the Board of Supervisors indicate, at some point, there was some confusion regarding this matter. . (See Petition, Exh. "E", 4th page from end, under caption "Public Health Committee")

30. In fact, I was charged by the Board of Supervisors with the work attendant to the closing of the CHHA, for which I was paid the weekly stipend of \$150.00.

31. In actuality, there was no one officially appointed to act as interim or acting director of the Department upon Ms. Strack's resignation.

32. Instead, Betsy Bernocco, a former member of the Board of Supervisors and president of the County Board of Health, who also happens to be a Registered Nurse, volunteered to oversee the day to day programmatic operations of the Department.

33. Ms. Bernocco agreed to do so, with the expectation that she would be on site in the Department two days per week and that I would assist her with regard to personnel related matters, all matters related to the closing of the CHHA and communications with the NYS Department of Health relative to the efforts to recruit and receive approval for a new director.

34. Ms. Bernocco did oversee the day to day program operations of the Department from approximately December 31, 2010 to March 31, 2011, at which time she asked to be compensated for her services.

35. The Board of Supervisors declined Ms. Bernocco's request for compensation, as a result of which, Ms. Bernocco declined to continue providing her services.

36. I do think it is fair to say that the Board of Supervisors regarded me as the contact person if there was a question about the Department. I also think it is fair to say that the staff regarded me as the day to day contact person, since I was available in the County office building on a full time basis due to my position as Personnel Officer. Also, after Ms. Bernocco left in March 2011, I was the only contact person.

37. Similarly, I think it is fair to say that the Board of Health viewed Ms. Bernocco as the contact person if someone on the Board of Health had a question about the Department, especially regarding any programmatic issue.

38. But neither myself nor Ms. Bernocco were ever appointed interim or acting director of the Department after Ms. Strack's departure, officially or unofficially.

The Independent Study of the Department:

39. In the midst of the closing of the CHHA and the resignation of the director of the Department, the Boards of Health and Board of Supervisors determined to examine the organization and structure of the Department.

40. To do so, the County engaged Bonnie Hamilton, the Delaware County Director of Public Health, who has decades of experience in public health matters and is independent of some of the political cross winds that sometimes blow in Schoharie County.

41. Ms. Hamilton spent considerable time studying the remaining operations of the Department and interviewed each and every employee in the Department.

42. In or about February 2011, Ms. Hamilton issued a report which set forth her many concerns about the structure of the Department and her recommendations for changes to accomplish more efficient and more coordinated operations and delivery of services.

43. A copy of the report issued by Ms. Hamilton is annexed hereto and made a part hereof as Exhibit "A."

44. Among the structural problems reported by Ms. Hamilton, was a lack of interaction and coordination between the various divisions within the Department.

45. Ms. Hamilton noted that the so called silo effect "...creates problems in establishing cross training or back up staffing in programs. It also detracts the staff from working together on common goals." (Exhibit A, pg. 3)

46. A graph from Ms. Hamilton which illustrates the silo effect is annexed hereto and made a part hereof as Exhibit "B". Attached thereto is the new organizational configuration which Ms. Hamilton suggested the County work towards.

The Elimination of Petitioner's Position:

47. In January 2011, at the instigation of the Board of Health, Ms. Bernocco and I attempted to do a time study of what each employee in the Department did on a day to day basis.

48. During the month of January 2011, we asked each employee to keep a daily log of their activities, so we could, together with Ms. Hamilton's anticipated report, consider what changes, if any, were needed to the structure and operations of the Department.

49. There was much resistance to these efforts, since Department employees had largely been left to their own devices in setting their daily routines for many years.

50. Ms. Bernocco and I tried to explain why these needed to be done.

51. Petitioner was particularly resistant to doing the time logs, saying she felt they were demeaning. Again, Ms. Bernocco and I tried to explain to her that the Board of

Supervisors wanted all positions evaluated in light of the difficult fiscal times faced by the County.

52. The daily logs completed by the employees were shared with the Board of Health and the Public Health Oversight Committee of the Board of Supervisors.

53. Ms. Bernocco and I also shared these logs with Asante Shipp-Hilts in or about June, 2012 when she became the *defacto* head of the Department.

54. Unfortunately, all records of the time study were destroyed in the August 28, 2011 flood.

55. In May 2011, Asante Shipp-Hilts was appointed Epidemiology Coordinator for the Department, which was the highest ranked position within the Department.

56. Ms. Hilts' official job specification makes her the *defacto* Department head in the absence of a director or deputy director.

57. Soon thereafter, Ms. Hilts also began studying the operations of the Department.

58. Ms. Hilts reported to me one particular inefficiency which she had observed, namely that the Public Health Nurse and R.N. who survived the closing of the CHHA, could easily be performing the nursing duties which petitioner was performing since it actually involved very little work.

59. At the time Ms. Hilts initially made this observation to me, she did not make any recommendation regarding the continuation or discontinuance of petitioner's position.

60. It is true that petitioner's salary, which at the time of the abolishment of her position was approximately \$58,538, was largely covered by grant monies.

61. However, the cost of her fringe benefits, including health insurance, retirement contributions and the like, amounted to approximately 51% of her salary (\$29,854) and were not covered by grant monies.

62. Upon information and belief, the County is under no legal obligation to continue a position just because the cost of the same is supported in part by grant monies.

63. In the final analysis, I did not recommend that petitioner's position be abolished.

64. However, I did speak in support of Ms. Hilts' recommendation to both the Board of Health and the Board of Supervisors that petitioner's position be eliminated for reasons of efficiency, the details of which are set forth in the accompanying affidavit of Ms. Hilts.

Consideration of Petitioner as Director and/or Interim Director:

65. Petitioner seems to complain that she was not considered for the position of director of the Department.

66. This is true, but not because of petitioner's age.

67. Petitioner was not considered for the position of director of the Department for a very simple reason, namely because she did not submit an application for the position.

68. Petitioner and I did have one or more conversations regarding whether she was qualified for the position of director.

69. I told petitioner that I did not think she was qualified because 10 NYCRR 11.2(a) (2) (ii), as I understood it, required a Master's Degree in "public health or a related field."

70. I understood that petitioner's Master's Degree was in "health education" which qualified her to teach that subject in schools, but was concerned that it may not be considered a "related field" by the NYS Department of Health.

71. However, I was also very careful to explain to petitioner, as I did to anyone else who expressed interest in the position, that it was the NYS Department of Health which would determine who was or was not qualified under the controlling regulations.

72. At no time did I discourage petitioner from applying for the position of director.

73. Once the application period had closed, I took all applications and forwarded them to the NYS Department of Health.

74. The NYS Department of Health determined that there was only one candidate that met all regulatory requirements for the position, namely Dayna Maniccia. However, Ms. Maniccia had just bought a house in Albany County and was not willing to move to Schoharie County, which was also a regulatory requirement. A copy of some of the correspondence I had with the NYS Department of Health regarding its review of candidates is annexed hereto and made a part hereof as Exhibit "C"

75. The NYS Department of Health also advised that it considered Ms. Hilts, the person ultimately appointed as director, to be qualified but that she needed some enhanced level of management structure.

76. I was not surprised at the NYS Department of Health's position, because the Department used to have a deputy director position, which had been eliminated in the not too distant past.

77. The Department also had a management position in the form of the director of Environmental Services. The gentleman holding this position (Mike Cole) retired in March 2011 after 30 years of service. The position was not re-filled due to lack of work.

78. The Department also formerly had a director of Patient Services, which was a management level position. The woman holding this position (Ruth Ashworth) retired and the position was never refilled on a permanent basis because of the closing of the CHHA. However, Ms. Ashworth's position was refilled on a temporary basis to fulfill the County's obligations in transferring the CHHA. One such temporary appointment was given to Anne Williams, who on information and belief is around age 60. The other person appointed temporarily to that position was Kathleen Slater who, upon information and belief is approximately age 60.

79. Given the limited choices, both the Board of Health and the Board of Supervisors agreed to the NYS Department of Health's condition, that if it were to approve Ms. Hilts' appointment as Director, the County would refill the deputy director position, which it did.

80. It was not done in the "willy nilly" manner suggested by the petition.

81. The deputy director position was refilled as a condition of obtaining the NYS Department of Health's approval for Ms. Hilts' appointment as director.

82. In order to save some monies, the person appointed as deputy director of the Department is now also serving as the person in charge of all weights and measure matters in the County.

83. Likewise, petitioner was not considered as interim or acting director of the Department because she never applied for the position. In fact, such a position was never posted.

84. Because of the turmoil in the Department, according to what Ms. Bernocco told me, there was little thought given to an interim or acting director.

85. As a matter of practice in the County, when a department head leaves, if there is a deputy, the deputy has sometimes been appointed interim/acting director. In the absence of a deputy, the practice has been to appoint another department head to act as interim/acting director of a department. Or in some cases, no one has been appointed to act as interim director.

86. To my knowledge, the County has never appointed a subordinate employee similarly situated to petitioner as acting director of any department.

My Alleged Dislike of Petitioner and the Former Director:

87. Petitioner also alleges that in December 2010, I "...began a campaign of intimidation against petitioner and other employees [of the Department] who had been supportive of the previous Public Health Director." (Petition, para. #16)

88. Petitioner goes on to allege that my intent was to "persuade or force" Department employees who had supported the former director to leave their jobs.

89. This is not only untrue, it borders on the ridiculous.

90. Firstly, for the approximate 2 - 2½ years that Ms. Strack served as Director, I had, for the most part, a very cordial and wholly professional relationship with Ms. Strack. During those years, Ms. Strack was at my house for a pampered chef party, we went shopping together and we took our children to swim at a lake one summer.

91. Admittedly, when Ms. Strack fell into disfavor with the Board of Health due to her management style, some difficulties and tensions did arise between the two of us, but this was only after the Board of Health asked me to sit in on a meeting wherein that Board told Ms. Strack that she would not be reappointed as director of the Department.

92. But for the most part, Ms. Strack and I had a good relationship and I, probably more so than anyone else, attempted to defend her to the Board of Health.

93. In short, I had no significant problems with Ms. Strack and therefore had no reason to seek to penalize others who also had a good relationship with Ms. Strack.

94. As to my relationship with petitioner, from my perspective, I was never anything but professional and cordial to her, as well.

95. During the relevant time period, petitioner's mother was having some pretty significant health issues.

96. I did everything I could to accommodate petitioner in her efforts to be supportive of her mother, in the form of approving time off for petitioner on short notice, flexing her schedule and the like, as evidenced by some emails exchanges which are annexed hereto and made a part hereof as Exhibit "D".

97. If asked, petitioner would also confirm that some years ago, I defended petitioner to the former director Carl Stefanik when he was not, in my view based upon a complaint from petitioner, letting petitioner perform her duties to her full capacity.

98. I also later worked on petitioner's behalf to have her position upgraded from a Public Health Educator I to a Public Health Educator II as part of the 2007 budget, and then successfully got that position reallocated upwards to a grade 19 while Ms. Strack was director.

99. In paragraphs 9-12 of the petition, petitioner complains of two supposed meetings we had during which it is alleged that I basically screamed at her, berated her, denied her union representation and discouraged her from applying for the position of director.

100. None of this is true.

101. Sometime in either December 2011 or January 2012, I went to the Department of Health to speak to Ms. Bernocco.

102. When I asked for Ms. Bernocco, I was informed that she was in the conference room with petitioner and I was free to join them, which I did.

103. I entered the conference room and greeted both Ms. Bernocco and petitioner.

104. Ms. Bernocco indicated that petitioner wanted to apologize for the way she had behaved at an earlier meeting and that she had some concerns about the way the Department was being run.

105. Ms. Bernocco indicated to petitioner that petitioner should just tell me of her concerns and we could discuss them.

106. The meeting lasted about one hour.

107. To the best of my recollection, petitioner complained of the following matters: she did not like the time study and felt it was demeaning, she did not like a comment she said I had made, which she misinterpreted, about internal candidates for the director position and how she felt insulted that she had not been selected to act as interim director .

108. In response, I pointed out that I had not made the one or more comments petitioner claimed I had about internal candidates, that the time study was necessary to get a handle on what changes, if any, may be called for in the department and that it was not my call on whether an interim director would be appointed.

109. I admit that, as the conversation progressed, there was some tension in the room.

110. I further admit, that I have a somewhat booming voice, but at no time during that meeting, did I "scream" or "yell at" petitioner.

111. In fact, to the extent there was tension in the room, I would attribute it to petitioner's refusal to accept anything Ms. Bernocco or I said and to constantly go back and try to reargue points over and over again, with which I lost some degree of patience.

112. At no time did I indicate that I would block petitioner's application for the position of director, should she submit one, which she never did.

113. At no time during this impromptu meeting did petitioner ever ask for union representation.

114. It was petitioner who initiated the meeting with Ms. Bernocco. If she wanted union representation present, she was free to have so arranged and I would have readily agreed as I have a generally very positive relationship with all local CSEA representatives.

115. I am very familiar with the circumstances under which union representation is required. This meeting had nothing to do with discipline and therefore was no reason for union representation.

116. I have no knowledge of what medications, if any, petitioner may or may not be taking.

117. Additionally, I did not take steps to reduce petitioner's responsibilities because of any dislike of petitioner.

118. The Quality Assurance Program to which petitioner refers (Petition, para. 15) was a quality assurance program for the CHHA. Once the CHHA was transferred, there was no need for a quality assurance program relative to the CHHA.

119. As to a general quality assurance program, Ms. Hamilton, who had performed the independent review of the Department, recommended that an independent person be used to develop a general quality assurance program/policy since what the Department had in place was so lacking.

120. Ms. Bonnie Pecka, a former County consultant, was hired as a consultant to review and update policies and procedures for the entire Department and to evaluate the quality assurance policies and procedures now that the CHHA was no longer being operated by the County.

121. Further, with respect to Ms. Pecka's work, she was hired as a consultant for a limited period of time, to do specific tasks.

122. The County did not incur the cost of fringe benefits with Ms. Pecka's work and, in the County's view, Ms. Pecka gave considerable and quality services for the modest sum of monies paid to her, which I believe was about \$7,000.

123. In paragraph 15 of the petition, it is also complained that another County employee was brought in to take over fiscal management of Departmental grants.

124. This is correct. It was the view of the new director that there was little, if any, fiscal consistency relative to grants and it had proven to be inefficient to have a multitude of Departmental employees over seeing a multitude of grants.

125. In an effort to become more efficient, and to have more accountability, Ms. Hilts determined that she wanted one person having fiscal oversight of all departmental grant monies. This measure had also been recommended by Ms. Hamilton.

126. Before this was done, Ms. Hilts would have to talk to one employee about one grant and another employee about another grant. The two employees, in this example, did not necessarily oversee or account for the grant monies in a consistent manner. It was, as set forth in Ms. Hilt's accompanying affidavit, very cumbersome, if not impossible for her to have any meaningful oversight into the expenditure of grant monies under the old way of doing things.

127. In the interest of efficiency, an employee who did fiscal work for grants in the Mental Health Department was assigned to do the same for the Department, on a shared services basis.

Petitioner's Allegations of Age Discrimination:

128. I am unaware of petitioner's age, although if forced to guess, I would have guessed she is in her mid to late 50's.

129. In any event, I have never considered the age of a person with respect to hiring, lay off or any employment related decision.

130. With respect to hiring, the Court needs to keep in mind that most County positions are competitive class positions.

131. My primary responsibility is to see that the required competitive exams are called for and that the resultant eligibility list is sent to department heads, who make the hiring decision. Age plays no role in this process.

132. Further, there were three other employees whose positions with the Department were abolished at or about the same time as petitioner's.

133. The title of Early Intervention Service Coordinator was abolished at or about the same time as petitioner's position. That position was held by Bruce Niles, who, upon information and belief is in his 50's. He had only been with the County approximately three years.

134. In accordance with guidance from the Department of Health, Mr. Niles should have been carrying a minimum case load of 25 clients and a maximum case load of 65 clients.

135. Mr. Niles was, at the time his position was eliminated, carrying a case load of 15 clients. The other person working in early intervention had a case load of only 13 clients.

136. In other words, the combined case load of these two full time employees barely justified one full time position.

137. The early intervention person who retained her position was with the County 15 years, as opposed to the three years of seniority held by Mr. Niles.

138. The title of Public Health Preparedness Coordinator was also abolished at the same time as petitioner's position. This position was held by Eva Gigandet, who has also sued the County. Upon information and belief, Ms. Gigandet is in her early 40's.

139. The Departmental position of Accounting Supervisor, Grade B was eliminated in September 2011. This position was held by Kim Euler. The work formerly performed by Ms. Euler was assigned to the person from the Mental Health Department who took over grant responsibilities for the Department on a shared services basis. Upon information and belief, Ms. Euler is in her 50's. The Mental Health employee who took over these fiscal responsibilities has some 20+ years of seniority with the County, as compared to Ms. Euler who, at the time, had only approximately 8 years of service with the County. Effective on or

about April 1, 2012, Ms. Euler has been returned to full time work with the County in the Department of Social Services.

140. A graph showing all the positions eliminated from the 2012 budget is annexed hereto and made a part hereof as Exhibit "E". What should be apparent from this list is the relative low seniority of those laid off, which was a significant decision in this process.

141. Clearly, the common factor for those who did lose their positions was their relative low seniority. The ages of these same people vary widely from 24 to 64.

142. Age had nothing to do with the decision to abolish any of these positions.

143. With respect to the abolishment of petitioner's position, it is important to keep in mind that I did not recommend that her position be eliminated from the 2012 budget.

144. Rather, Ms. Hilts, who came on board in May 2011 as Director of Epidemiology and was thus the highest ranking employee in the Department, recommended that petitioner's position be abolished, for reasons explained in Ms. Hilt's accompanying affidavit.

145. Once Ms. Hilts made that decision, I did try to support her, as I typically do with any department head making a difficult decision.

146. As to the assertions in paragraph #27 of her supporting affidavit, the petitioner's entitlement to health insurance coverage for she and her spouse are set forth in the collective bargaining agreement between the County and the union which represents petitioner. It would have been a gross violation of that agreement to allow petitioner to forgo the spousal insurance to which she was entitled.

147. Further, as the Court is well aware, the Taylor Law precludes the County from dealing directly with an employee on a one on one basis.

148. The County must deal with the Union on any such matters, in this case, CSEA.

149. CSEA never approached myself, or to my knowledge, anyone in the County with a proposal to save jobs through eliminating spousal health coverage or by any other means.

Legislative Equivalency Argument:

150. Petitioner's Public Health Educator II position was created by virtue of it being funded in the 2007 budget.

151. Petitioner's Public Health Educator II position was eliminated by virtue of the funding for the same being eliminated from the 2012 budget.

152. There is thus, in every respect, the required legislative equivalency.

Conclusions:

153. I do not enjoy participating in the process which may result in the loss of someone's job.

154. Layoffs are difficult business for myself, the department heads, the employees that remain and of course, particularly for the employee losing their job.

155. Nevertheless, over the years, I have had to assist department heads in this process, mostly by reviewing civil service requirements and assuring compliance with the provisions of the collective bargaining agreement relative to seniority and like issues.

156. For these reasons, and the reasons set forth in the accompanying affidavits in opposition, it is respectfully submitted that there is no merit to the petition and it should be dismissed.

Sworn to before me this 7th

day of June, 2012.

Leslie D. Carr
Notary Public

Cassandra Ethington
Cassandra Ethington

LESLIE D. CARR
Notary Public, State of New York
Qualified in Warren County
No. 01CA6012498
Commission Expires Aug. 31, 2014

Section 20

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SCHOHARIE

In the Matter of the Application of
EVA GIGANDET,

Petitioner,

VERIFIED PETITION

For a Judgment Pursuant to Article 78 of
The Civil Practice Law and Rules

- against -

Index No.: 2012+193

THE COUNTY OF SCHOHARIE,

Respondent.

Petitioner, Eva Gigandet (hereinafter "Ms. Gigandet"), by and through her attorneys,
Tully Rinckey PLLC, as and for her verified petition, alleges the following:

Preliminary Statement:

1. This proceeding is commenced pursuant to CPLR Art. LXXVIII for a judgment compelling the Respondent, the County of Schoharie (hereinafter "the County"), to immediately reinstate Ms. Gigandet in her former position with full back-pay and benefits retroactive to her last day of employment, plus interest, and, for such other relief as this Court may deem proper.

Facts:

2. Ms. Gigandet is an individual residing in Sloansville, in the County of Schoharie, New York.

3. The County is a municipal corporation of the State of New York with an address of 284 Main Street, Schoharie, New York.

4. The position of a Public Health Program Specialist (hereinafter "PHPS position") was created by the County's Board of Supervisors (hereinafter "the BOS") in or around October 2002.

5. At all times material hereto, the PHPS position was funded at least one hundred percent (100%) through a federally funded grant.

6. The BOS agreed in or around September 2003, to fill the PHPS position for as long as federal grant funds were available to fund the position.

7. In or around February 2008, Ms. Gigandet was hired as part of the overall project called the Public Health Emergency Preparedness Program (hereinafter "the PHEP program"), and was given the title of Public Health Preparedness Coordinator (hereinafter "PHPC position").

8. The PHPC position was created to fill the role of the PHPS position, originally adopted by the BOS in or around October 2002.

9. Ms. Gigandet's position was fully funded by federal grant money through August 9, 2012, through an agreement with Health Research, Inc. (hereinafter "HRI") and the County.

10. The federal funds awarded to HRI for supporting the PHEP program are still available to the County.

11. Ms. Gigandet received a letter dated November 2, 2011, indicating that her last day of employment with the County would be December 2, 2011.

12. The purported reasons Ms. Gigandet was given for her termination were downsizing, restructuring, and budgetary reasons.

13. While Ms. Gigandet's employment was extended two weeks past December 2, 2011, Ms. Gigandet's employment was effectively terminated December 16, 2011.

14. After Ms. Gigandet was terminated the County was required to shift her work to other employees, or hire additional employees, to fulfill Ms. Gigandet's job requirements.

15. The County hired a Deputy Director of Health who *inter alia* assumed the majority of Ms. Gigandet's job duties.

AS AND FOR A FIRST CAUSE OF ACTION
(Termination in Bad Faith)

16. Petitioner repeats and realleges each and every allegation set forth in the paragraphs above as though fully set forth herein.

17. The County has averred that Ms. Gigandet's position was terminated due to downsizing, restructuring, and budgetary reasons.

18. Ms. Gigandet's position was fully funded by federal grant money through August 9, 2012, through an agreement with HRI and the County.

19. The County is contractually prohibited from replacing or supplanting any current state or local expenditures with the funds generated by the HRI agreement.

20. The County's termination of Ms. Gigandet was conducted in bad faith, insofar as the County did not have a *bona fide* financial reason to abolish Ms. Gigandet's position, nor did the County accomplish any financial savings by eliminating Ms. Gigandet's position.

AS AND FOR A SECOND CAUSE OF ACTION
Violation of the Doctrine of Legislative Equivalency)

21. Petitioner repeats and realleges each and every allegation set forth in the paragraphs above as though fully set forth herein.

22. The County abolished the PHPC position, and thereby terminated Ms. Gigandet, by adopting the proposed 2012 budget for the County.

23. The County's abolishment of the PHPC position without an act of equal dignity or import of the legislative act that created the PHPC position violates the doctrine of legislative equivalency.

WHEREFORE, Ms. Gigandet respectfully seeks judgment compelling the County to immediately rehire Ms. Gigandet in her former position with full back-pay and benefits retroactive to her last day of employment, plus interest, and, for such other relief as this Court may deem proper.

Dated: April 2, 2012
Albany, New York

Respectfully Submitted

EVA GIGANDET

By her attorneys:



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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SCHOHARIE

In the Matter of the Application of
EVA GIGANDET,

Petitioner,

For a Judgment Pursuant to Article 78 of
The Civil Practice Law and Rules

- against -

THE COUNTY OF SCHOHARIE,

Respondent.

VERIFICATION

Index No.:

I, Eva Gigandet, being duly sworn and under oath do hereby depose and say that I am the named party-Petitioner to the above-captioned civil action, that I am thoroughly familiar with the facts and circumstances therein presented, I have read the contents of the within Petition, and do hereby verify the truth of the allegations thereof.


EVA GIGANDET

STATE OF NEW YORK
COUNTY OF Albany, ss.

On the 2nd day of April, 2012, personally appeared Eva Gigandet, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal


NOTARY PUBLIC

KARIN P. NOSAL
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01NO6298884
QUALIFIED IN RENSSELAER COUNTY
COMMISSION EXPIRES JUNE 1, 2013